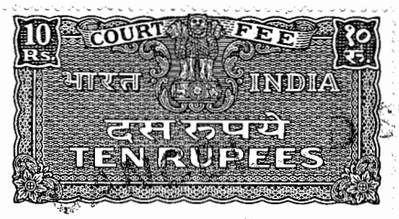

(3)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR [C.G.]

WRIT PETITION NO.4883/2005

PETITIONER :- Badri Prasad S/o Shri Bhagwat Prasad Sahu, aged about 67 years, R/o Taraud, Tahsil Janjgir, District Janjgir-Champa [C.G.].

Plaintiff

VERSUS

RESPONDENTS :- 1] Smt. Saroj Awasthi, aged about 65 years, W/o Malik Lal

Defendants

2] Shri Vikash S/o Malik Lal, aged about 30 years.

Both are resident of Devnandan Nagar, Bilaspur, Tah. And District Bilaspur [C.G.].

P.A. No. 4950/05
Presented by Shri V.K. Sharma
dated 22/9/05

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

Details of petition: -

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..W.P.No.4883..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6-10-2005

Heard Shri Ram Kumar Tiwari, counsel for the petitioner.

By this petition under Article 227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 10-5-2005 passed by the 9th Civil Judge, Class-2, Bilaspur whereby learned Civil Judge has rejected the application of the petitioner filed under Order 6 Rule 17 read with Section 151 of the C.P.C. for amendment of the plaint.

Perusal of the impugned order shows that the impugned order is perverse, therefore, the petition is being decided without issuing notice to the respondents, as issuance of the notice is going to further delay the proceedings of the suit. However, if the respondents still feel aggrieved, they will be at liberty to move an application before this Court for modification of this order.

Brief facts leading to filing of this writ petition are that the petitioner herein filed a civil suit against the respondents herein for permanent injunction that respondents should not interfere in the possession of the petitioner herein. During the pendency of the suit, as per the averments made in the application filed under Order 6 Rule 17 read with Section 151 of the C.P.C. respondents raised certain construction after filing of the suit, therefore, on account of this subsequent event the petitioner sought an amendment in the plaint

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that whatever construction respondents have raised after filing of the suit that should be demolished and for that purpose the petitioner sought an amendment for insertion of para 4-A, para-6 of the plaint, para 7 (C) and (D) and para 8 (D) for mandatory injunction for demolition of the building which was constructed after filing of the suit and for that purpose the petitioner herein also assessed the Court fee for mandatory injunction and also for the damages. However, learned trial Court rejected the said application after hearing the parties on the ground that if the said amendment is allowed that is going to change the nature of the suit, relief and valuation.

As the petitioner sought an amendment on account of the construction which was raised after filing of the suit, therefore, the petitioner was within his right to seek amendment. The impugned order passed by the trial Court is perverse.

In the result, the writ petition is allowed and the impugned order is quashed.

In view of this order, M.(W.)P. No.3923/2005 stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Barve

18/10/05